IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 5600 of 2007(N)

PETITIONER:

JESSYAMMA SEBASTIAN,
LECTURER, SENIOR SCALE (RTD.), DEPT. OF HINDI,
ALPHONSA COLLEGE PALA, KOTTAYAM DISTRICT.

BY ADV. SRI.B.MOHANLAL
SRI.RATHEESH.P.R.

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, HIGHER EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOTTAYAM.

3. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS,
KOTTAYAM.

BY ADV. SRI. T.A. SHAJI, SC, M.G.UNIVERSITY
GOVERNMENT PLEADER SMT.SUDHA DEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5600 of 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE ORDER NO.A.C.BV-(2)/606/2004 DATED 3.5.05

EXT.P2- TRUE COPY OF THE G.O.(MS)NO.209/96/H/EDN. DATED 24.12.96 ISSUED BY THE 1ST RESPONDENT

EXT.P3- TRUE COPY OF THE ORDER NO.ACBV-1-798-05 DATED 19.12.05 ISSUED BY THE THIRD RESPONDENT

(TRUE COPY)

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.5600 of 2007

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Dated this the 30th day of October, 2007

JUDGMENT

The petitioner retired from service on 31.3.2006 as a lecturer in an aided College. The Petitioner's grievances in the writ petition is that he has not been granted Senior Scale taking into account his prior broken periods of service put in before regular service. The petitioner had broken periods of service as follows:

19.01.1984 - 16.03.1985
23.07.1990 - 25.01.1991
02.08.1995 - 13.03.1996

2. She started regular service from June 1996 onwards. Petitioner's contention is that as per Ext.P2 he is entitled to have his prior broken periods of service also computed for the purpose of eligibility for Senior Scale as per Exts.P2 and P3. The same has been denied to her on the ground that as per G.O.(P). No.171/99/H. Edn. dated 21.12.1999, only those prior service of not less than one year continuous service would count for Senior Scale and Selection Grade. The petitioner seeks the following reliefs:

i) issue a writ of mandamus or other appropriate writ order of direction commanding the 2nd respondent to disburse the revised UGC salary and arrears on the basis of the revised UGC scale to the petitioner in the promoted post of Lecturer Senior Scale with effect from 03.10.2001 to 31.03.2006 including the pensionary benefits covered as per Ext.P1 within a stipulated time as directed by this Hon'ble court.

ii) To declare that the petitioner is entitled to get U.G.C pay revision and salary arrears to the post of Lecturer Senior Scale with effect from 03.10.2001 to 31.03.2006 including the pensionary benefits covered as per Ext.P1.

3. The learned Government Pleader submits that after the earlier Government Order of 1990 recognizing broken periods of service also for the purpose of granting Senior Scale and Selection Grade was replaced by G.O.(P).No.171/99/H. Edn dated 21.12.1999, only those broken periods of service extending to one year or more continuously would only be eligible for the purpose of Senior Scale and Selection Grade. I have considered the rival contentions. Admittedly, even after computing broken periods of service the petitioner would not be eligible for Senior Scale before the 1999 Government Order came into force. Therefore, the petitioner's right has to be considered in

accordance with the 1999 Government Order. As per 1999 Government Order, for the purpose of counting of broken periods of service for the purpose of Senior Scale and Selection Grade that service should have been of continuous service of one year or more. Admittedly none of the broken service of the petitioner extends to one year or more.

4. The petitioner relies on a Division Bench decision of W.A.No.197 of 2006 to argue for the proposition that broken periods of service of less than one year duration also would count for the purpose of Senior Scale and Selection Grade.

5. But on a reading of that judgment, I find that the judgment does not in absolute terms state that all broken periods of service even if or less than one year continuous duration can be reckoned for the purpose of Senior Scale and Selection Grade. What the judgment says in para 4 is as follows:

> " On a plain reading of the above paragraph, it can be seen that paragraph 7.1 gives the benefit of counting of past service rendered in various scientific organisations provided the appointment was not ad-hoc or in the leave vacancy of one year duration as provided under paragraph 7.7. But even in that case, the ad-hoc service will be counted provided paragraph 7. (a), 7(b) and 7(c) are satisfied. Therefore, the restriction

imposed as per paragraph 7.7 namely, that ' the appointment was not ad-hoc or in a leave vacancy of less than one year duration' for counting of any past service will apply only if the candidate is seeking the benefit of counting of past service as per para 7(1) of the order. The appellants have no case that the writ petitioners claimed the past service rendered in any of the organisations made mention of in para 7.1 of the order for the purpose of the benefit conferred under the notification for senior scale. If so, para 7 has no application to the present case. Thus, no case is made out for interference with the judgment of the learned Single Jude."

6. The petitioner has no case that the petitioners service is anything other than those mentioned in para 7.1 of the Government order. Therefore that judgment has no application to the petitioner.

In view of the above findings, there is no merit in the contention of the petitioner and accordingly the writ petition is dismissed.

S.SIRI JAGAN, JUDGE

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